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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/764,735	01/17/2001	Katrin Dagmar Clarkson	J3515(C)	6620

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UNILEVER  
PATENT DEPARTMENT  
45 RIVER ROAD  
EDGEWATER, NJ 07020

EXAMINER
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DEWITTY, ROBERT M

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 04/22/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/764,735

Applicant(s)

CLARKSON ET AL.

Examiner

Robert M DeWitty

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 January 2002.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 and 27 is/are pending in the application.
- 4a) Of the above claim(s) 22-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 and 27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-26 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4/5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

Claims 1-21 and 27 are pending in the instant application. Claims 22-26 are withdrawn from further consideration.

### ***Specification***

1. The abstract of the disclosure is objected to because the abstract contains claim limitation language "...comprising" (line 1). Correction is required. See MPEP § 608.01(b).

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 1-21 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kraskin (U.S. Pat. No. 4,356,190), further in view of Beecham Group Limited (GB 1,420,946).

Kraskin teaches compositions which inhibit the formation of undesirable products on the body formed from microbial action. The compositions are useful for microorganism such as Gram Negative organisms and Gram Positive organisms (col. 6, lines 55-65). The products are composed of amino acid compounds, carriers, and other ingredients. Suitable amino acid compounds include EDTA, DPTA, and HEDTA (col. 4, lines 33-52). Suitable carriers for the compositions include lotions, ointments, water solutions, and alcohols, such as ethanol or isopropanol.

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The carrier is used in conjunction with the water to form the composition. The amount of carrier used can be, for example 5.0% by weight (see example VIII).

Beecham Group patent relates to anti-microbial compositions useful against Gram Positive and Gram Negative bacteria (page 1, lines 13-15). The composition consists of a compound as in formula I with parts of EDTA, and an acceptable carrier (page 2, lines 1-4). In various formulas of the compositions, ethanol is used as an acceptable carrier in an amount ranging from about 5% to about 30% (see Example 3; also see page 7, lines 17-18). In one example, alcohol is utilized in an amount at 45%.

Based on the art available at the time the invention was made, an anti-microbial composition comprising an amino acid, an alcohol carrier, and water would have been known to one with ordinary skill in the art. The use of a specific amount or % by weight of the alcohol carrier would have been an optimization, capable to one with ordinary skill in the art.

### ***Response to Arguments***

3. Applicant's arguments filed 1/23/02 have been fully considered but they are not persuasive.

Firstly, Applicant asserts that Kraskin does not make obvious compositions with a carrier fluid and a solubility promoter such as water. This assertion is faulty. Kraskin clearly teaches the combination of water and a carrier (see Example VIII at Part B), and Kraskin further teaches alcohols such as ethanol and isopropanol are suitable as

carriers. Thus, it would have been obvious to use a carrier such as ethanol, in combination with water in the compositions of Kraskin.

Secondly, Applicant asserts that Kraskin does not teach the use of an alcohol in the composition at least 50% by weight. The examiner makes note that Applicant has not provided an evidence of criticality in the use of alcohol at 50% by weight. Beecham Group Limited provides evidence that ethanol as a carrier may be used in varying amounts, say from 5% to 30%. There is even an example where the alcohol is used at 45%. It is believed by the examiner, in view of the lack of evidence of criticality, that the use of an alcohol at such a % is mere optimization, as opposed to a point of novelty.

The previous rejection under 35 U.S.C. 103(a), because of Applicant's amendment, is withdrawn, and the new rejection entered.

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert M DeWitty whose telephone number is 703-308-2411. The examiner can normally be reached on 9:00am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's primary, Neil Levy can be reached on 703-308-4527. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7924 for regular communications and 703-308-7924 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1235.

RMD  
April 2, 2002



NEIL S. LEVY  
PRIMARY EXAMINER